

# REAL ESTATE COMMISSION

PROFESSIONAL & VOCATIONAL LICENSING DIVISION  
DEPARTMENT OF REGULATORY AGENCIES

STATE OF HAWAII  
1010 RICHARDS STREET  
P. O. BOX 3469  
HONOLULU, HAWAII 96801

## FINAL HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT

on  
WAIKOLOA VILLAS II  
Waikoloa, South Kohala, Hawaii County  
State of Hawaii

REGISTRATION NO. 1057

### **IMPORTANT — Read This Report Before Buying**

#### **This Report Is Not an Approval or Disapproval of This Condominium Project**

It reflects information obtained by the Real Estate Commission in its investigation of the project. This report, based on a principle of disclosure, is issued by the Commission for the purpose of preventing fraud, misrepresentation or deceit.

The developer shall not enter into a binding contract or agreement for the sale of any unit in a Condominium Project until

- (1) A copy of this Report has been given to the prospective purchaser,
- (2) The latter has been given an opportunity to read same, and,
- (3) His receipt taken therefor.

Issued: July 5, 1979

Expires: August 5, 1980

#### SPECIAL ATTENTION

A comprehensive reading of this report is urged in order that the personal requirements and expectations to be derived from the property can be ascertained. The attention of the purchaser or prospective purchaser is particularly directed to the following:

THIS REPORT REFLECTS INFORMATION DISCLOSED IN THE REQUIRED NOTICE OF INTENTION SUBMITTED NOVEMBER 17, 1978, AND INFORMATION SUBSEQUENTLY FILED AS OF JUNE 29, 1979. THE DEVELOPER, IN NOTIFYING THE COMMISSION OF ITS INTENTION TO SELL, IS COMPLYING WITH THE REQUIREMENTS OF THE HORIZONTAL PROPERTY ACT, CHAPTER 514A, HAWAII REVISED STATUTES, AS AMENDED.

1. Since the issuance of the Commission's Preliminary Report of January 10, 1979, on WAIKOLOA VILLAS II, Registration No. 1057, the Developer reports that certain material changes have been made in the Project.

2. The Developer advises that this Project and WAIKOLOA VILLAS I will be merged into a single fee simple project to be known as WAIKOLOA VILLAS I AND II, containing 104 residential apartments located in 8 low-rise buildings; a project office located in a separate building which will also contain 1 commercial apartment; 2 swimming pools, one with a jacuzzi; 2 cabanas; and 140 parking stalls.
3. The Developer has submitted to the Commission for examination all documents deemed necessary for the registration of the condominium project and the issuance of this Final Public Report.
4. The Developer advises that the Declaration of Horizontal Property Regime and attached By-Laws for Waikoloa Villas II are recorded in the Bureau of Conveyances in the State of Hawaii in Book 13683, Page 74, that the First Amendment thereto is recorded in said Bureau in Book 13767, Page 569, and that the Condominium Map for Waikoloa Villas II has been filed in said Bureau as Condominium File Plan No. 614. The Developer also advises that the Declaration of Horizontal Property Regime and attached By-Laws for Waikoloa Villas I are recorded in said Bureau in Book 13683, Page 9, that the First Amendment thereto is recorded in said Bureau in Book 13767, Page 566, and that the Condominium Map for Waikoloa Villas I has been filed in said Bureau as Condominium File Plan No. 613.
5. The Developer also advises that said Declarations will be amended by Amendment to Declarations Merging Phases, a copy of which is on file with the Commission, and that an apartment will be conveyed to a purchaser together with an undivided interest in both Projects, as merged, pursuant to a revised form of Apartment Deed which is also on file with the Commission. The purchaser or prospective purchaser is advised to read with care these documents and this Final Public Report, for if the two Projects are merged together in accordance with the Developer's advice to the Commission, the Commission will NOT require that a Supplementary Report be issued for reasons of such a merger.
6. No advertising and promotional materials have been submitted pursuant to the rules and regulations promulgated by the Commission.
7. The purchaser or prospective purchaser is advised to acquaint himself with the provisions of Chapter 514A, Hawaii Revised Statutes, as amended, and the condominium rules and regulations which relate to Horizontal Property Regimes.

8. This Final Public Report automatically expires thirteen (13) months after date of issuance, July 5, 1979, unless a Supplementary Public Report issues, or the Commission, upon review of the registration, issues an order extending the effective period of this report.
9. This Final Public Report (white paper stock) amends the Preliminary Public Report (yellow paper stock), becoming a part of WAIKOLOA VILLAS II registration. The Developer is responsible for placing a true copy of this Final Public Report in the hands of all purchasers and prospective purchasers, along with a copy of the Preliminary Report and Disclosure Abstract. The Developer is responsible for securing from each purchaser or prospective purchaser a signed receipt for said reports.

Except for information under the topical headings which follow, the information in the Preliminary Public Report dated January 10, 1979, has not been disturbed.

NAME OF PROJECT: Upon the merger of this Project and the Waikoloa Villas I project, the merged project shall be known as WAIKOLOA VILLAS I AND II.

LOCATION: The Land submitted to the Regime was subdivided and contains an area of approximately 2.109 acres. Upon merger, the combined acreage of the Project and the Waikoloa Villas I project will be approximately 6.798 acres.

DESCRIPTION: The Type 3-A apartment will now contain approximately 1820 square feet, including 2 lanais totalling 265 square feet; the Type 2-C apartment will now contain approximately 1397 square feet; the Type 2-A1 apartment will now have a storage space of 203 square feet; and the Type 2-B apartment includes 2 lanais of 265 square feet. There will be 49 unassigned, uncovered, on-grade parking stalls in Phase II.

Upon the merger of Waikoloa Villas I and II there will be a combined total of 104 residential apartments located in 8 low-rise buildings (without basements); and 1 commercial apartment located in a separate one-story building (without basement), in which building will also be located the project office consisting of 1 office, a lobby, a restroom and a general storage and maintenance room (the project office will be a common element); there will be 2 swimming pools, 1 with an attached jacuzzi, and 2 cabanas. All buildings will be constructed basically of concrete, steel, wood, glass, aluminum and allied building materials. Parking will be in 140 unassigned, uncovered, on-grade parking stalls.

The 104 residential apartments will be divided into the 3 basic types (1 bedroom, 2 bedroom and 3 bedroom) as previously disclosed in the Preliminary Report. There will be a total of 6 three-bedroom units, 78 two-bedroom units and 20 one-bedroom units in the combined projects. Each unit type will be subdivided

into Type 3-A, Type 2-A, Type 2-A1, Type 2-B, Type 2-C and Type 1-A, also as previously disclosed in the Preliminary Report, except as noted above in this heading, and there will be 6 Type 3-A; 16 Type 2-A; 16 Type 2-A1; 16 Type 2-B; 30 Type 2-C; and 20 Type 1-A in the combined projects. The location and number of each apartment in the Project also remains as previously described in the Preliminary Report.

COMMON ELEMENTS: The common elements will include the common elements of both projects and will remain of the same character as previously disclosed in the Preliminary Report, except that there will be 1 project office, 2 swimming pools, 1 with an attached jacuzzi, 2 cabanas, 2 shuffleboards and 2 barbeque/picnic areas in the combined projects.

INTEREST TO BE CONVEYED TO PURCHASER: The undivided interest in the common elements of both the Waikoloa Villas I and II projects, as merged, will be conveyed with each apartment, pursuant to the revised form of Apartment Deed on file with the Commission. Said undivided interest appertaining to each apartment for voting and all other purposes shall be as follows:

Type of Apt.	Gross Area (Ft. <sup>2</sup> ) (Each Apt.) Excluding Loft Area	Percentage of Undivided Interest in the Common Elements (Each Apt.)	No. of Apts.	Total Gross Area (Ft. <sup>2</sup> ) (Each Apt. Type) Excluding Loft Area	Percentage of Ownership in the Common Elements Per Type (Total)
<u>Upon Merger of Waikoloa Villas I and II</u>					
1 Bedroom					
1-A	1002	.7157	20	20,040	14.3140
2 Bedroom					
2-A, 2-A1	1381	.9865	32	44,192	31.5680
2-B	1425	1.0179	16	22,800	16.2864
2-C	1397	.9886	30	41,910	29.6580
3 Bedroom					
3-A	1820	1.2908	6	10,920	7.7448
Commercial Apartment (in Increment I)	624	.4288	1	624	.4288

MERGER OF WAIKOLOA VILLAS I AND II WITH PHASE III: According to the present plan of incremental development, when and if Phase III is developed and merged with Phases I and II, each type apartment will have the following reduced percentage interest in all three phases:

Type of Apt.	Gross Area (Ft. <sup>2</sup> ) (Each Apt.) Excluding Loft Area	Percentage of Undivided Interest in the Common Elements (Each Apt.)	No. of Apts.	Total Gross Area (Ft. <sup>2</sup> ) (Each Apt. Type) Excluding Loft Area	Percentage of Ownership in the Common Elements Per Type (Total)
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Upon Merger of Waikoloa Villas I, II and III

1 Bedroom					
1-A	1002	.5859	20	20,040	11.7180
2 Bedroom					
2-A, 2-A1	1381	.8073	32	44,192	25.8336
2-B	1425	.8332	16	22,800	13.3312
2-C	1397	.8090	42	58,674	33.9780
3 Bedroom					
3-A	1820	1.0563	14	25,480	14.7882
Commercial Apartment (in Increment I)	624	.3510	1	624	.3510

The Developer again states that it has no obligation to construct Waikoloa Villas III or to merge Waikoloa Villas III with Phase I and II, and the Developer reserves all of its rights with respect thereto, including without limitation the right to modify the present plan for incremental development for Waikoloa Villas III.

PURPOSE OF BUILDING AND RESTRICTION TO USE: The Declaration was revised to state that each residential apartment shall be occupied and used only as dwelling or lodging units to provide transient, temporary or permanent quarters for the respective owners thereof, their tenants, families, domestic servants and personal guests and for no other purpose. The commercial apartment (which is in Waikoloa Villas I) may be used for any purpose permitted by law.

The provision in the Declaration regarding the rights of an owner of two or more apartments separated by a common element to alter or remove that common element have also been revised. Any such alteration now requires the consent of the Board of Directors; however, the Board may not withhold its consent merely because an owner proposes this kind of alteration. The Board must have other grounds for withholding consent. Similarly, the consent of the Board is now required for alterations to the commercial apartment (which is in Waikoloa Villas I); however, the Board may not withhold its consent merely because of the use or change in use for which the alterations are proposed, as long as such use or change in use is permitted under applicable zoning laws. The Board must have other grounds for withholding consent. In all cases, the Board must respond to a reasonably detailed

request for its consent for alterations within thirty (30) days, and if the Board fails to respond, its consent is deemed to have been given, and if the Board responds by withholding its consent, the Board must state in reasonable detail its reasons for withholding its consent and the bases therefor.

The Declaration also states that the Developer has reserved the right to use the project for sales activities.

OWNERSHIP TO TITLE: The Policy of Title Insurance issued by Title Guaranty of Hawaii, Incorporated, as of April 2, 1979, reveals that the fee simple title to the property for both Waikoloa Villas I and II projects is now vested in the Developer, James K. Schuler & Associates, Inc.

ENCUMBRANCES AGAINST TITLE: Said Policy of Title Insurance also reveals that the property is now encumbered as follows:

1. For taxes that may be due and owing, reference is made to the Tax Assessor, Third Division.
2. Easement E-19 for electrical purposes as shown on File Plan 1188.
3. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
4. Covenants contained in Declaration of Protective Covenants dated May 27, 1971, recorded in said Bureau in Book 7577, Page 66, as supplemented by instruments dated May 27, 1971, recorded in Book 7577, Page 94; dated December 22, 1971, recorded in Book 8026, Page 291; dated May 16, 1972, recorded in Book 8306, Page 196; dated July 31, 1973, recorded in Book 9360, Page 369; dated March 22, 1974, recorded in Book 9794, Page 32; dated May 24, 1974, recorded in Book 9956, Page 597; dated May 31, 1975, recorded in Book 10701, Page 5; dated May 19, 1975, recorded in Book 10706, Page 490; dated January 28, 1979, recorded in Book 13453, Page 147, and Supplemental Declaration of Protective Covenants dated March 21, 1979, recorded in Book 13588, Page 658.
5. Terms, conditions and provisions contained in that certain Deed from First Hawaiian Bank, Trustee, to the Developer, dated April 2, 1979, and recorded in said Bureau in Book 13588, Page 661, as follows:
  - a. Exception and reservation in favor of said Trustee, its successors and assigns ("Grantor"), for easements for electricity, gas, communications and other utility purposes and for sewer, drainage and water facilities over, under, across, along and through the easements designated in said File Plan 1188 (i.e., the easement referred to in 2 above), with the right to grant to the State of Hawaii, County of Hawaii, Board of Water Supply or other

appropriate governmental agency or to any public or private utility or other corporation, easements for said purposes within said easements so designated.

b. Exception and reservation in favor of said Grantor, its successors and assigns, of all right to underground water under or appurtenant to the land with the right to assign and transfer said rights to the State of Hawaii, County of Hawaii, Board of Water Supply or any public or private utility or other corporation; provided, however, that said rights shall not include any surface right to enter upon and drill for water.

c. Acceptance and approval of the aforesaid Declaration of Protective Covenants, as supplemented and amended, and the covenant and agreement to pay all charges therein provided and to observe and perform all of the other terms and conditions therein contained and to be observed and performed by an owner as therein defined, which acceptance and approval and covenant and agreement made by the Developer, for itself and its successors and assigns, as a covenant running with the land.

d. Consent and agreement made by the Developer, for itself and its successors and assigns, to any grant by said Grantor, its successors or assigns, to the State of Hawaii, County of Hawaii, Board of Water Supply or other appropriate governmental agency or public or private utility or other corporation, of easement rights or underground water rights, as stated in a above, and to join in and confirm any such grant upon request.

6. Mortgage, Security Agreement and Financing Statement dated March 29, 1979, and recorded in said Bureau in Book 13588, Page 677, made by the Developer, as Mortgagor, to Washington Mortgage Co., Inc., as Mortgagee, to secure the repayment of the total sum of \$11,300,000, any additional advances and other amounts secured thereby, all according to the terms of that certain promissory note of said mortgagor therein referred to. Note: Said Mortgage covers both the Waikoloa Villas I and II projects.

In addition, the Developer has disclosed the following additional encumbrances:

7. Financing Statement covering certain fixtures located on the real property, given as Security by the Developer in favor of Washington Mortgage Co., Inc., recorded in said Bureau in Book 13588, Page 708. Note: Said Financing Statement covers both the Waikoloa Villas I and II projects. A copy has been provided the Commission.

8. Said Declarations of Horizontal Property Regimes,  
By-Laws and Condominium Maps.

NOTE: With respect to Items 6 and 7, the terms of the interim loan satisfy the conditions stated in paragraph 12 of the specimen Reservation Agreement/Sales Contract. Therefore, as was disclosed previously under the heading "Purchaser Money Handling", all security interests (including without limitation said Mortgage and Financing Statement) obtained by Washington Mortgage Co., Inc., as the construction lender in connection with the construction loan (as well as any extension, renewals and modification thereof) shall be and remain at all times a lien or charge on the project prior to and superior to any and all liens and charges arising from the Sales Contract or any prior agreement with each Buyer. The Developer advises that each purchaser will be required to execute an Addendum to his Reservation Agreement/Sales Contract confirming that his interest is and will be subordinate to all security interests obtained by Washington Mortgage Co., Inc.

NOTE: Upon a merger of Waikoloa Villas I and Waikoloa Villas II, the combined project will also be subject to:

1. Easement S-1-A for sanitary sewer, as described and shown in that certain "Cancellation of Designation and Reservation of Easement S-1 as Shown on File Plan 1188; Designation and Grant of Easement S-1-A; and Consent of Mortgagee recorded in said Bureau in Book 13767, Page 572.
2. Terms, conditions and provisions contained in that certain Deed from said Trustee to the Developer, dated April 2, 1979, recorded in said Bureau in Book 13767, Page 669, which are substantially identical to those stated above in Item 5.

The Declaration states that the Developer has reserved the right to designate and grant rights-of-way and other easements which are for the sole benefit of the project, or any merged projects or which do not materially interfere with the use, or materially impair the value of the project.

PURCHASE MONEY HANDLING: As was previously disclosed, each Reservation Agreement/Sales Contract provides that it shall operate as a reservation of an apartment in favor of the purchaser, subject to the purchaser's continued performance thereunder, but not as a binding obligation to purchase unless and until the purchaser voluntarily executes an Addendum to his Reservation Agreement/Sales Contract obligating him to purchase and receipts for a copy of the Final Public Report on the project. Each prospective purchaser should be aware that he may decline to execute the Addendum and to receipt for a copy of the Final Public Report and may obtain a refund of all moneys previously deposited in escrow. A specimen copy of the Addendum is on file with the Commission.

The Developer advises that the Developer's covenant set forth in the specimen Reservation Agreement/Sales Contract to complete the Project within two years after the date of the issuance of the Final Public Report is now subject to extension only by reason of the occurrence of any event outside of the Developer's control making performance by the Developer within said two-year period impossible. Extension for any other reason is hereby waived by the Developer. The Addendum also states that the Developer is also obligated to complete the Waikoloa Villas I project within said two-year period, subject to extension only for the same reason.

The Developer also advises that it reserves the right to cancel only in the event the purchaser should be in default, (in addition to other rights and remedies stated in the specimen Reservation Agreement/Sales Contract or otherwise available to the Developer) or in the event the prospective purchaser shall fail promptly to execute the Addendum and receipt for a Final Public Report on the Project, and any other option to cancel as stated in the specimen Reservation Agreement/Sales Contract is also hereby waived.

Each purchaser and prospective purchaser is advised that the Addendum contains other provisions affecting his obligation to purchase, and is advised to read with care the Addendum.

MANAGEMENT AND OPERATIONS: Pursuant to the authority of the Developer set forth in the specimen Reservation Agreement/Sales Contract, the Developer has named Aaron M. Chaney, Inc., as the initial managing agent pursuant to a Management Agreement dated April 19, 1979, a copy of which is on file with the Commission. Note: The Management Agreement covers both the Waikoloa Villas I and II projects.

STATUS OF PROJECT: The Developer has named Cawdry-Mars-General as the General Contractor pursuant to Construction Contract dated March 12, 1979, a true copy of which (including the building plans and specifications) are on file with the Commission. The Construction Contract covers both the Waikoloa Villas I and II projects. The Construction Contract states that the Developer has the right to order changes in the construction of the Project. A building permit for the Project and for the Waikoloa Villas I project has been obtained and construction has commenced. It is estimated that pursuant to the Construction Contract, construction of both projects is to be substantially completed on or about April 3, 1980, subject to extensions for certain unforeseen causes outside of the control of the Contractor.

The Developer also advises that Pioneer Federal Savings and Loan Association of Hawaii and Hawaiian Federal Savings and Loan Association have agreed to provide permanent loans to individual apartment purchasers, upon terms and conditions established by these lenders. The Developer disclaims any responsibility and liability for any dealings between purchasers and prospective purchasers and either of said permanent lenders, each of which is an independent lending institution.

WAIKOLOA VILLAGE ASSOCIATION: Under this heading in the Preliminary Report, certain references were made to Boise Cascade Home and Land Corporation ("Boise"). Boise has sold its interests at Waikoloa to Transcontinental Development Co. ("Transcontinental") and AtPac Land Co. ("AtPac"), both of which are Texas general partnerships. Accordingly, each buyer and prospective buyer is further advised that Transcontinental has assumed the responsibility of managing the "common areas" of the Waikoloa Village Association, which is separate from the Association of Apartment Owners, and will to some extent subsidize losses in the operation of these facilities. Once the Management Agreement expires on December 31, 1985, neither Transcontinental nor Boise will have any further obligation with reference to the common areas, and assessments on Waikoloa Village Association members may increase very substantially thereafter. Buyers and prospective buyers are also advised that neither the Developer nor any of the Developer's agents was or is authorized to make any representation whatsoever as to the future development of Waikoloa or as to the intentions of Boise, Transcontinental or AtPac regarding any further development of any portion of Waikoloa.

NOTE: Purchasers and prospective purchasers are advised that the Developer has made other modifications and changes to the Declaration, By-Laws and other documents which are not specifically mentioned in this Final Report. Each purchaser and prospective purchaser is advised to read with care these documents and to note all changes made.

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The purchaser or prospective purchaser should be cognizant of the fact that this published report represents information disclosed by the Developer in the required Notice of Intention submitted for waikoloa Villas II on November 17, 1978, and additional information subsequently filed as of June 29, 1979.

This FINAL HORIZONTAL PROPERTY REGIMES (CONDOMINIUM) PUBLIC REPORT is made a part of Registration No. 1057 filed with the Commission on November 17, 1978.

This report, when reproduced, shall be a true copy of the Commission's Public Report. The paper stock used in making facsimilies must be white.

  
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AH KAU YOUNG, CHAIRMAN  
REAL ESTATE COMMISSION  
STATE OF HAWAII

Distribution:

Department of Taxation  
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Registration No. 1057

July 5, 1979